

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of new rule I and the	)	ON PROPOSED ADOPTION AND
amendment of ARM 37.75.101,	)	AMENDMENT
37.75.102, 37.75.105,	)	
37.75.108, 37.75.109,	)	
37.75.201, 37.75.202,	)	
37.75.205, 37.75.206,	)	
37.75.209, 37.75.301,	)	
37.75.302, 37.75.303,	)	
37.75.401, 37.75.402,	)	
37.75.501, 37.75.502,	)	
37.75.601, 37.75.602, and	)	
37.75.603 pertaining to child	)	
and adult care food program	)	
(CACFP)	)	

TO: All Interested Persons

1. On November 30, 2005, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rule as proposed to be adopted provides as follows:

RULE I CHILD AND ADULT CARE FOOD PROGRAM (CACFP): FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) The CACFP program shall be administered in accordance with the requirements of federal law governing the child and adult care food program as set forth

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active recruitment" means direct contact, initiated by a day care home sponsoring organization, with a day care home provider that is currently participating in the child and adult care food program (CACFP), ~~with another sponsor,~~ for the purpose of soliciting enticing a the provider to enroll with or switch to a different sponsor any particular sponsoring organization. Examples of such direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through email, by fax, and through a mailing or through a newsletter that is invitational in content disseminated by a sponsoring organization to one or more providers CACFP participants that it does not sponsor.

~~(2) "Administrative funds" means USDA child and adult care food program (CACFP) grant funds distributed to qualifying non-profit sponsoring organizations contracting with the department to administer the CACFP.~~

(2) "Adult day care center" means an adult day care center as defined in 7 CFR 226.2.

(3) "Advanced payment" means funds made available to an entity institution for its CACFP costs prior to the month in which such costs will be incurred.

(4) "Adverse ~~administrative~~ action" means an action taken by the state CACFP in the administration of the CACFP having a negative impact, ~~including the following:~~ on an institution.

~~(a) denial of the entity's application for participation;~~

~~(b) denial of an application submitted by a sponsoring organization of centers on behalf of a facility;~~

~~(c) termination or suspension of an entity from participation in CACFP;~~

~~(d) denial of an entity's application for start-up funds;~~

~~(e) denial of an entity's application for advance payment;~~

~~(f) denial of all or part of an entity's claim for reimbursement, provided the claim was submitted in a timely manner;~~

~~(g) denial by the state agency to forward to food and nutrition services (FNS) an exception request by the entity for payment of a late claim or a request for an upward adjustment to a claim; or~~

~~(h) demand for the remittance of an overpayment against an entity.~~

center, or an outside-school-hours care center. "Center" may also mean an emergency shelter, special after school snacks center, head start center, or a proprietary center that enters into an agreement with the department to administer the CACFP in a specific area for a specific period of time.

(9) "Child care center" means any public or private nonprofit organization, or any proprietary center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, head start centers, and organizations providing day care services for children with disabilities. Child care centers may participate in the CACFP as independent centers or under the auspices of a sponsor.

~~(9)~~ (10) "Combination food" means an entree with more than one CACFP required food component included in its ingredients.

~~(10)~~ (11) "Corrective action plan" means a plan, ~~approved by the department,~~ indicating the actions to be taken by an entity institution or provider for the purpose of correcting a deficiency or addressing a problem.

~~(11)~~ (12) "Day care home" or "DCH" means a family or group day care home as those terms are defined in 52-2-703, MCA, and is an organized nonresidential child care program for children enrolled in a private home registered or approved as a family or group day care home, and participating in the CACFP through a sponsor.

~~(12)~~ (13) "Department" means the department of public health and human services.

~~(13)~~ (14) "Disciplinary action" means an action taken for the purpose of modifying behavior or correcting a situation or circumstance.

~~(14)~~ (15) "Elementary school" means any school serving children in kindergarten through 8th grade.

(16) "Emergency shelter" means a public or private nonprofit organization whose primary purpose is to provide temporary shelter and food services to homeless families with children.

~~(15) "Entity" means a sponsoring organization or center.~~

~~(16)~~ (17) "Institution" means a sponsoring organization, or child care center, outside-school-hours care center or adult day care center which enters into an agreement with the department to assume final administrative and financial responsibility for CACFP operations.

~~(17)~~ (18) "Licensing staff" means department personnel who enforce state laws and rules for the purpose of registering, licensing, and regulation of child care providers.

~~and is either that is:~~

(a) a proprietary Title XIX or Title XX center with at least 25% of enrolled or authorized capacity, whichever is less, that is paid from a state-pooled funding source which includes federal Title XX funds; or

(b) a free and reduced price center with at least 25% of its enrollment or authorized capacity, whichever is less, that is in the free and reduced price reimbursement category.

~~(21)~~(23) "Provider" means ~~the persons~~ a person providing care in a family or group day care home.

~~(22)~~(24) "School attendance area" means the specific geographical area whose student population is served by a specific elementary school.

~~(23)~~(25) "Seriously deficient" ~~has the same meaning as "seriously deficient" in 7 CFR 226.2, the definitions pertaining to CACFP, which is hereby adopted and incorporated into this rule. A copy of 7 CFR 226.2 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952~~ means the status of an institution, center, or a day care home that has been determined to be seriously noncompliant in one or more aspects of its operation of the CACFP.

~~(24)~~(26) ~~"Sponsoring organization or sponsor"~~ "Sponsor" means an organization under contract with the department that assumes final administrative and financial responsibility for CACFP operations for facilities under its jurisdiction and is responsible for the administration of the CACFP at various facilities meets the definition of sponsoring organization in 7 CFR 226.2, the federal definitions pertaining to CACFP.

~~(25)~~(27) "Tiering" means categorizing the reimbursement rate for day care homes based on school designation, census block numbering area, and established criteria for income standards, school designation, and census block numbering area.

(28) "Title XIX" means Title XIX of the federal Social Security Act.

~~(26)~~(29) "Title XX" means Title XX of the federal Social Security Act.

~~(27)~~(30) "USDA" means the United States department of agriculture.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.102 CIVIL RIGHTS (1) The CACFP is a federal program and all participants must comply with Title VI of the

~~set forth in (2)(a) to be used in all informational materials disseminated to the public. The following complete nondiscrimination statement must be included in all informational materials disseminated to the public wherever possible:~~

(a) "In accordance with federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue SW, Washington, DC 20250-9410, or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

(3) If the material is too small to permit the full statement to be included (~~i.e.~~ e.g., brochures, coupons, electronic benefit cards, flyers, and other media of less than a page) the material ~~will~~ must, at a minimum, include USDA's short nondiscrimination statement, as follows: "THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER."

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.105 HEAD START CATEGORICAL ELIGIBILITY ~~(1) A child enrolled in a head start organization that is participating in the CACFP as a day care center or sponsor of centers is categorically eligible for the CACFP if the child is enrolled in the head start program on the basis of a determination that the child is a member of a family that meets the low income criteria, including those children who are automatically eligible for a second year of head start based on low income.~~

(1) A head start institution that serves children whose families do not meet the low income criteria of head start for eligibility must use the Montana CACFP income eligibility form and income guidelines to determine the free, reduced, or paid reimbursement category for any such children.

(2) For CACFP documentation and eligibility purposes, the head start organization must maintain a list of head start participants eligible for free meal reimbursement. may be listed with The list must include a statement certifying that the they are participant is enrolled in head start on an the basis of head start income eligible basis eligibility. This list is to must be signed each month by a head start official authorized to act on behalf of the organization head start and must be retained on site and be readily available, or must be made

- ~~(a) name of child;~~
- ~~(b) adult signature and date of signature;~~
- ~~(c) social security number of signing adult;~~
- ~~(d) number of members in the household;~~
- ~~(e) monthly or annual household income; and~~
- ~~(f) determination of CACFP eligibility.~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.108 ADVANCES (1) The department may, in its discretion, ~~decide whether to~~ advance a payment. The amount of any advance payment will be based on the historical payment data for the specific ~~entity~~ institution. Any and all advance payments ~~will~~ must be repaid to the department prior to the beginning of the next fiscal year.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.109 AUDIT GRANTS (1) An ~~entity~~ institution may be eligible to receive a grant from the department for the purpose of reimbursing ~~an entity~~ the institution for all or part of the CACFP portion of an audit. To qualify for a grant, an ~~entity~~ institution must meet the following minimum requirements:

(a) An audit must be a condition for participation or continued participation in the CACFP.

(b) The professional services of the auditor or auditors must be performed in accordance with all applicable state and federal laws, regulations, and policies relating to ~~purchasing and procurement of~~ professional services ~~acquisition~~.

(c) Prior to beginning an audit, the ~~entity~~ institution must submit to the department for approval:

(i) a completed request for reimbursement of audit expenses;

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal office of management and budget (OMB) circular A-133 and the USDA OMB supplement for the catalog of federal domestic assistance (CFDA) 10.558, child and adult care food program, dated March 2002; ~~and~~

~~(iii) a completed copy of a federal debarment and suspension certificate, signed by the auditor engaged to perform the audit; and~~

(iv) (iii) evidence the supervising auditor is a certified

must submit to the department within 30 days following completion of the audit:

(a) two copies of the audit (including management letters referenced in the audit report);

(b) a copy of the final invoice from the auditor, documenting the cost of an OMB circular A-133 audit; and

(c) a time log documenting actual direct costs of auditing the program; and

(d) an invoice on the institution's letterhead requesting reimbursement of the CACFP portion of the audit expense.

(3) The department may authorize a grant for up to the actual direct cost of auditing the program.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.201 DAY CARE HOME SPONSORING ORGANIZATIONS SPONSORS SERVICE AREAS (1) The Montana CACFP sets geographical boundaries of operation for sponsors. Boundaries are set based on financial viability and need for services. Geographical boundaries follow county lines.

(2) In any area of the state where at least two day care home sponsors are currently available to all program participants, additional sponsor applications are not available will not be accepted.

(3) If a provider would be more efficiently served by a sponsor in an adjacent service area, the service areas may be adjusted if this arrangement is by mutual consent between the affected sponsors, and prior written approval is obtained from the department after the department confirms that the provider would be more efficiently served by the adjacent service area sponsor.

(4) A prospective new sponsor must demonstrate to the department the need for the services to be provided by submitting a list of registered and operating day care home providers who are not presently served by a sponsor in the proposed geographical area. The department will then determine whether the existing sponsors are capable of providing CACFP services to the new providers on the list.

(5) An institution interested in becoming a day care home sponsor must be either a governmental or private nonprofit organization.

(6) Prior to completing an application, preliminary documentation must be submitted to and approved by the Montana CACFP that includes:

(a) a written request to become a sponsor with the name,

(f) certification that neither the organization nor any of its principals have ever been disqualified from participation in any publicly funded program or been convicted in the last seven years of any activity that indicated a lack of business integrity, including, but not limited to, fraud, embezzlement, theft, forgery, or bribery;

(g) documentation of financial viability that demonstrates the ability to withstand temporary interruptions in program payments and pay expenses that are not funded through the CACFP;

(h) documentation of administrative capability that reflects adequate staff to operate and administer the program, including the supervision and monitoring of participating facilities; and

(i) documentation of program accountability that includes financial management, recordkeeping, claim processing, and training systems that will be used.

~~(4)(7) An~~ The application to become for a new sponsor ~~sponsorship of family day care homes must~~ includes the following:

(a) written acknowledgment of receipt of the criteria for family day care home (FDCH) organizations sponsors;

(b) ~~an FDCH a written~~ sponsor proposal; and

(c) an oral presentation.

~~(5) In order to be eligible to participate in the Montana CACFP FDCH, a prospective sponsor must demonstrate:~~

~~(a) need for the services to be performed;~~

~~(b) the service area to be served under the new sponsor's plan; and~~

~~(c) financial capability, accountability, and viability as well as capability in program operations.~~

~~(6)(8) A prospective sponsor must complete the written proposal, orientation training, oral presentation, and Montana CACFP training and have been be approved for each requirement before becoming a sponsoring organization the institution will be allowed to become a sponsor. The prospective sponsor must be a non-profit organization maintaining a tax-exempt status with the internal revenue service.~~

~~(7) The prospective sponsor must submit a list of potential registered and operating day care providers who are not presently served by a FDCH sponsor in the planned area of operation in order to demonstrate need for the services to be provided.~~

~~(8) A sponsor may provide assistance to a day care home that has identified licensing or registration deficiencies, provided prior approval is obtained from the department.~~

(9) In the event that a sponsoring organization



to demonstrate the capability to serve the providers of the discontinuing or terminated sponsor. The department will notify all providers and sponsors in the event that a sponsor discontinues or is terminated from CACFP participation. If the department determines that the existing sponsors in a service area are unable to serve the providers, the department may facilitate moving providers to existing sponsors outside of the existing sponsor's service area.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.202 TIERING CHANGES (1) A sponsor ~~shall~~ may only claim meals for purposes of reimbursement for the its sponsored day care homes under its sponsorship once per month for any one tier category of tiering.

(2) A change in tier status resulting from new data, such as census, income information or elementary school information distributed ~~for sponsor to sponsors for use in evaluating tier status evaluation~~, is effective statewide the first day of the month during which the income information, census, or elementary school information is available to the sponsoring organization.

(3) A day care home may submit a request for a tier change evaluation to its sponsoring organization. If approved, the change will be effective as noted below:

(a) changes based on elementary school attendance area or census block are effective on the first of the month during which the evaluation request is received, except as provided in (3)(c);

(b) changes based on income fluctuations or relocation of the provider are effective on the first day of the month that the evaluation request is documented and verified; and

(c) a change made as a result of an investigation or to correct a tiering error will be retroactive to the date of the error.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.205 PROVIDER ENROLLMENT (1) A new provider must have a current, valid registration to provide child care in order to participate in the CACFP. An existing provider may be working toward renewal of its registration and participate in the CACFP if assurance is obtained from licensing staff that they are approved and the registration is forthcoming.

(1) (2) A Each sponsor shall complete must do the

system (CCUBS), showing that the provider is registered and the effective date of the registration; or

(iv) a screen print from the virtual pavilion showing that the provider is registered and the effective dates of the registration; and

(a)(b) obtaining obtain written preapproval for participating from the Montana CACFP pre-approval prior to performing a pre-approval visit, and performing perform a pre-approval visit at the day care home prior to allowing the day care home to participate beginning participation in the CACFP. During the pre-approval visit, the sponsor must:

(i) determine that the home is operating as a day care home; discuss CACFP benefits and verify that the proposed food service does not exceed the capability of the day care home;

(ii) train the provider regarding CACFP requirements duties and responsibilities; and

(iii) discuss record keeping and documentation requirements, including but not limited to posted posting menus, meals to be served, and attendance records; and

(iv) discuss CACFP procedure, including record retention procedures, and provide training to ensure CACFP compliance.

(b) at the time of the pre-approval visit, obtain either:

(i) a copy of the registration certificate indicating the home is currently registered to provide day care services; or

(ii) written documentation from licensing staff indicating the provider has submitted all required information and has been approved for registration; or

(iii) documentation from licensing staff that a need exists for the use of administrative assistance from a CACFP sponsor which may be used to remedy registration deficiencies.

(2)(3) If a registered day care home is approved by the sponsor during the pre-approval visit, an application and CACFP agreement the CACFP sponsor/provider agreement must may be completed, reviewed, and signed by the provider and the sponsor's representative. The effective date to begin CACFP participation is the date the application and agreement CACFP sponsor/provider agreement is are signed by the authorized signatories for both the provider and the sponsor's representative. sponsor and the day care home. If the day care home has not yet received a registration certificate from licensing staff, but has been approved by licensing, a screen print from the child care licensing system may be used as interim license verification. The screen print must show proof of registration and the effective date of the registration for the day care home to begin participation in the CACFP.

(3)(4) If the location where care is provided by of a day

~~(b) a new CACFP agreement must be signed by both the sponsor and provider and dated on the date of the pre-approval visit if the standards in (3)(a) are met at that time; a Day Care Home Change in Information form must be completed and submitted to the sponsor; and~~

~~(c) the tiering tier status of the home must be redetermined.~~

~~(4)(5) If a sponsor misdates any document in order to manipulate or circumvent a rule, the sponsor's CACFP contract may be terminated will be placed under corrective action.~~

~~(5)(6) A sponsor shall must not submit a claim for a day care home which provider who is not registered or approved or in compliance with (2)(a).~~

~~(6)(7) Day care home A providers must retain on file for the current and preceding three federal fiscal years copies of the following information:~~

~~(a) copies of the signed application and agreement the signed applications and agreements; and~~

~~(b) the notification of reasons and procedures for termination, and~~

~~(c) pre-approval visit forms.~~

~~(8) A provider must retain the following information on file and have it readily available at the time of a review for the entire time the provider participates in the CACFP:~~

~~(a) a copy of the preapproval visit forms; and~~

~~(b) a copy of the current CACFP sponsor/provider agreement.~~

~~(7)(9) If a provider moves or changes its their legal name, a new application sponsor/provider agreement must be filled out completed and marked "CHANGE". The change must be identified as a change of status.~~

~~(a)(10) If only meal times are changed, a Meal Time Change form attachment is to must be completed and sent in submitted to the sponsor with the current month's claim. Each Meal Time Change form becomes a part of the sponsor/provider agreement and is effective upon the date of receipt.~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.206 RECRUITMENT (1) Day care home (DCH) sponsors are encouraged to recruit DCH providers to participate in the CACFP that are not currently participating and that have not participated in the CACFP through any sponsor within the last 30 days.

(1) (2) A DCH sponsoring organization may not engage in

defined in ARM 37.75.101, ~~the recruiting sponsoring organization~~ will be subject to disciplinary action.

(4) Disciplinary action ~~will~~ may include the following:

(a) Upon first violation, the Montana CACFP will issue a letter of warning to the sponsor stating that a recruiting contract violation has occurred, and the sponsor is required to complete a corrective action plan.

(b) Upon a second violation, the Montana CACFP will issue notice to the sponsor a letter warning that a second contract recruiting violation has occurred and indicating indicate that the sponsoring organization must complete a corrective action plan is considered seriously deficient,; and:

~~(i) the sponsor will be required to submit a corrective action plan; and~~

~~(ii)(i) tThe sponsor will be restricted to recruiting only new providers who are not currently participating in the CACFP under a current agreement with any other sponsoring organization; and~~

(ii) The sponsor may not accept any DCH providers that are changing sponsors or enroll a provider if the provider has participated in the CACFP within the preceding six months.

(c) If more than two violations occur, the department will issue written notice to the sponsoring organization that a recruiting violation has occurred, written notice that it is seriously deficient and that, if the serious deficiency is not fully and permanently corrected, an intent to terminate will be issued the department intends to terminate the CACFP contract. The number of DCH providers served by the sponsor will be capped for a minimum of one year, and the sponsor will not be allowed to enroll any new providers or providers changing sponsors without specific prior written approval from the Montana CACFP.

(5) Simultaneous active recruitment of multiple providers will be treated as a single violation.

(6) A disciplinary action for active recruitment will remain in effect through each three year contract renewal period. At the inception of a new contract renewal period, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following contract period. An example is:

(a) the original contract period is effective October 1, 2005 through September 30, 2008;

(b) the third recruiting violation occurs on June 30, 2008; and

(c) enrollment is capped from June 30, 2008 through June 30, 2009, extending into the following contract renewal period.

PROVIDER (1) A ~~day care~~ provider may be enrolled with only one CACFP ~~sponsoring organization~~ at a time while participating in the CACFP.

(2) Each ~~sponsoring organization~~ must ~~provide~~ supply a copy of this rule to all ~~participating~~ providers upon their enrollment in the CACFP.

(3) Except as provided in (5), a participating day care home may change ~~sponsoring organizations~~ its CACFP sponsor according to these guidelines:

(a) ~~a~~ A provider may change from one ~~sponsoring organizations~~ to another sponsor one time per year, the change to be effective the first day of the month following the notice provided in (3)(b). One time per year means once during ~~the one year period beginning on the date the provider last switched sponsoring organizations any 12 month period~~.

(b) ~~to~~ To change ~~sponsoring organizations~~ sponsors, a provider must notify ~~their~~ its current ~~sponsoring organization~~ in writing of ~~their~~ its intention to change ~~sponsoring organization~~ to another sponsor on or before the fifth working day of the month prior to the month in which the change to a new ~~sponsoring organization~~ sponsor is to be effective. The current sponsor must submit a copy of the written notification to the department.

(4) A provider who fails to give timely notification to ~~their~~ its ~~sponsoring organization~~, as required by (3)(b), will continue to be under the current sponsor until the first day of the ~~next later~~ following month.

(5) ~~Any provider who is subject to and~~ If a provider's current sponsor has requested information from the provider, is otherwise investigating the provider, or has notified the provider that ~~of corrective action by their current sponsoring organization is necessary,~~ the provider may not change ~~sponsoring organization~~ sponsors until the provider has been restored to good standing for a minimum of one calendar month.

(6) A ~~sponsoring organization~~ is not obligated to sponsor any particular provider.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.301 MENU EVALUATION (1) CACFP ~~participants~~ institutions and providers must ensure that all meals and snacks claimed for reimbursement meet all federal and state minimum standards in accordance with 7 CFR 226.20.

(2) ~~Menu evaluations must be performed at least annually~~ for the purpose of improving the nutritional content of meals

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.302 INFANT MEAL REIMBURSEMENT (1) All meal components required by the USDA infant meal pattern contained in 7 CFR 226.20, ~~which is adopted and incorporated into this rule,~~ must be supplied by the ~~child care~~ provider or center, with the exception of breast milk, for a meal to be eligible for reimbursement. ~~A copy of 7 CFR 226.20 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.~~

(2) Except as provided in (6), meals containing breast milk served to infants may be claimed for reimbursement. Other required or optional meal components must be supplied by the ~~child care~~ provider or center. If the parent supplies any meal component other than breast milk, the meal may not be claimed for reimbursement.

(3) Meals containing only breast milk do not qualify for reimbursement if feeding is performed naturally by the mother.

(4) Except as provided in (6), infant formula must be supplied by the ~~child care~~ provider or center for the meal to be eligible for reimbursement. If parents provide infant formula, meals cannot be claimed.

(5) Except as provided in (6), a ~~child care~~ provider or center must ~~provide~~ supply an infant with iron fortified formula or soy based formula if recommended by the infant's parent or the infant's health care provider.

(6) If an infant requires a specialty formula such as nutramigen, pregestimil, alimentum, and lofenalac that is much more expensive or difficult to obtain than a regular infant formula, the provider or center may request that the parent pay the difference between a regular priced formula and the much higher priced formula. If the parents supply the specific formula, in lieu of receipt of cash, the provider or center may credit the parents for the value of the formula the provider or the center would have supplied. A written agreement signed by both the provider or center and the parents indicating how specialty formulas are to be provided must be kept and must be available for review by CACFP staff and auditors.

(7) Whole milk is not allowed as a meal component for an infant who is 12 months or less of age.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.401 SPONSOR AND FACILITY TRAINING AND TRAINING RECORDS (1) A center must provide annual staff training on CACFP requirements, including those related to nutrition education, meal services, and food safety.

(2) Each ~~entity institution~~ must provide free training to each ~~day care home provider or center facility~~ it sponsors under the CACFP. Initial training for each ~~provider or center facility~~ must occur before any meal or snack is served for which CACFP reimbursement is claimed.

(3) Training sessions must be provided at least annually for each ~~day care provider or sponsored center facility~~.

(4) An ~~entity institution~~ must document each training session by keeping on file:

(a) an agenda which lists the date, time, topic, and location of the training; ~~of each training session and the topic or topics discussed;~~

(b) the names of the training facilitator or facilitators and their qualifications; and

~~(c) the anticipated educational outcomes for each training session; and~~

~~(d) (c) a sign in sheet roster labeled with the course name and subject matter, signed by each training session participant.~~

(5) The following individuals must attend at least five hours per federal fiscal year of CACFP training provided by the department:

(a) ~~the CACFP program director from each type of independent center; one of the center's cooks; and~~

(b) ~~one cook or nutrition coordinator from each independent center; the administrator, director, or nutrition coordinator.~~

~~(c) the CACFP program director from each sponsoring organization sponsoring a child care center;~~

~~(d) one cook or nutrition coordinator from each sponsoring organization sponsoring child care centers; and~~

~~(e) at least one other staff person from each center sponsored.~~

(6) Each sponsor of day care homes must provide, free of charge, a minimum of ~~five~~ four hours of training to the ~~day care home~~ providers it sponsors concerning CACFP requirements, including those relating to nutrition education, meal service, and food safety. Two hours of the required training must cover CACFP administrative and regulatory issues. The training to be

federal fiscal year.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.402 MILK PRODUCTION PURCHASE RECORDS (1) All reviews of centers performed by department staff and auditors under department contract will evaluate the milk purchase quantity documentation and compare it to the meals claimed that require a milk volume component.

(2) Notwithstanding any other applicable rule, if enough milk is not purchased and documented to meet the minimum meal component milk volume requirement, a corresponding meal reimbursement disallowance shall be made. ~~in accordance with the~~ The milk volume requirements of 7 CFR 226.20, ~~are adopted and incorporated into this rule by reference. Copies of 7 CFR 226.20 (2002) are available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.501 REVIEWS OF DAY CARE HOME SPONSORING ORGANIZATIONS SPONSORS (1) The department will conduct at least one review of each day care home sponsoring organization during each period consisting of two federal fiscal years (FFY) for sponsors sponsoring organizations with 100 or more homes. The department will conduct at least one review of each day care home sponsoring organization during each period consisting of three ~~FFYs~~ federal fiscal years for a sponsoring organizations with ~~less~~ fewer than 100 homes.

(2) The sponsoring organization must ensure that all program records are available during any review. Program records include but are not limited to:

(a) documentation to substantiate that the procedures outlined in the ~~sponsoring organization's~~ sponsor's current management plan have been and are being followed; and

(b) documentation of claims processed and fiscal activity for the three preceding federal fiscal years ~~FFYs~~, plus the current federal fiscal years ~~FFY~~.

~~(3) During the review of a sponsoring organization:~~

~~(a) if the sponsoring organization is found to be deficient and corrective action is required, the administrative portion of claims payments for that sponsoring organization may be withheld until the department verifies that the required~~



AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.502 REVIEWS OF CENTERS AND SPONSORS OF CENTERS

(1) The department will conduct a minimum of one announced or unannounced visit review of each center or sponsor of centers in each three year period.

(2) ~~Information that must be available at the time of the visit includes but is not limited to the following:~~ Each institution must provide all CACFP records to the CACFP review team when the CACFP performs an announced or unannounced review. Records that must be on site and made available to the CACFP during a review include but are not limited to:

- (a) monthly attendance records and sign in/out sheets;
- (b) food receipts, by month of purchase;
- (c) food service labor documentation;
- (d) menu plan and food production records, including written evidence of specific food quantities prepared;
- (e) completed income eligibility forms;
- (f) menus;
- (g) milk receipts, by month of purchase;
- (h) monthly financial reports; and
- (i) staff training records;
- (j) records of facility training performed by the sponsor;
- (k) monitoring procedures if a sponsor of centers;
- (l) monitor training records if a sponsor of centers;
- (m) a copy of the center's license, if the facility or institution is required to be licensed; and
- (n) a copy of the health and fire inspection if the center is self-certified.

(3) During an on site review, the CACFP will verify that:

- (a) the center is conducting a nonprofit food service;
- (b) for profit institutions are eligible to claim reimbursement for meals served;
- (c) meals offered and provided to CACFP participants are documented on menu plan and food production records that meet minimum food component and portion size requirements;
- (d) completed CACFP income eligibility forms are on site or made available to the CACFP during a review to document that the center is claiming the correct rate of reimbursement for the meals being claimed; and
- (e) records are satisfactorily completed to demonstrate which children and meals are claimed each day by each center or sponsored facility.

(3) ~~If the center is found to be deficient and corrective action is required, claims payment may be withheld up to 45 days~~

~~(5) Meal record deficiencies in meal production records shall result in corresponding meal reimbursement disallowances. If records are incomplete or missing, the department may require the center to provide additional months of production records to the department with the submission of the center's future claims. If documentation is not supplied in accordance with the requests, payment shall not be made and claims will be returned as incomplete. If meal records are not available on site at the time of the review, meals will be disallowed. In addition, the department may pursue other legal remedies.~~

~~(6) Income eligibility forms that are corrected in response to a corrective action plan must be copied and submitted to the department with all related claims. Failure to attach corrected income eligibility forms may result in the claim being returned unpaid as incomplete.~~

~~(7) A visit to a child care center may be conducted by the department's CACFP staff approximately 90 days after the child care center's enrollment date. The purpose of the 90-day visit is primarily educational and is intended to ensure that the organization has established the appropriate files and procedures for successful CACFP operation.~~

~~(8) Each full month may be subject to review.~~

(4) If a center or sponsor of centers submits a claim for reimbursement for any month, and does not have complete records on site during a review or make records available to the CACFP during a review, the following actions may be taken:

(a) meal reimbursement for the corresponding claim month may be disallowed;

(b) the amount of reimbursement for disallowed meals, as stated in a notice of overclaim from the CACFP, must be paid back to the CACFP;

(c) the meal disallowance total, as stated in a notice of action from the CACFP, is subject to an administrative review (appeal); and

(d) records that are not on site or made available during a review will not be considered by the CACFP when establishing the dollar amount for disallowed meals. An exception may be requested in writing by the institution and must be approved in writing by the CACFP.

(5) When meals are disallowed and an overclaim notice is received by an institution, the institution may request an exception to have records reviewed that were not on site or made available to the CACFP at the time of a review. The request must be submitted to the CACFP within 15 days of receipt of an overclaim notice.

(6) The CACFP will notify the institution of its decision

(8) Reimbursement for claims submitted after the date of review may be delayed up to 45 days from receipt of a complete and valid claim if the institution owes money to the CACFP.

(9) Additional corrective actions may be required as a result of missing records. The CACFP may request copies of various records for random months throughout the year to demonstrate compliance with those items as stated in (2), (3), and (4).

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.601 ADMINISTRATIVE REVIEWS (APPEALS) AND FAIR HEARINGS (1) Except as provided in ~~(2)~~(3), an ~~entity~~ institution may appeal an adverse administrative action through the department's office of fair hearings pursuant to the procedures provided in ARM Title 37, chapter 5. Adverse administrative actions include:

(a) denial of the institution's application for participation;

(b) denial of an application submitted by a sponsor of centers on behalf of a facility;

(c) termination or suspension of an institution from participation in CACFP;

(d) denial of an institution's application for start up funds;

(e) denial of an institution's application for advance payment;

(f) denial of all or part of an institution's claim for reimbursement, provided the claim was submitted in a timely manner;

(g) denial by the state agency to forward to food and nutrition services (FNS) of the USDA an exception request by the institution for payment of a late claim or a request for an upward adjustment to a claim; or

(h) demand for the remittance of an overpayment against an institution.

(2) An ~~entity~~ institution must file a written request for an administrative review (appeal) within 15 calendar days of receiving notification of an adverse administrative action by providing the written request to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

~~(2)~~(3) A day care home may only participate in the CACFP through a sponsoring organization. A participating day care

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.602 CORRECTIVE ACTION PLAN (1) An ~~entity~~ institution receiving notice that it is ~~seriously deficient, or~~ deficient in some aspect of the CACFP, shall submit to the department a corrective action plan to correct the deficiency ~~7.~~ postmarked within 30 days of receipt of the deficiency notice. The plan must be provided by the department, or within such other timeframe as is set forth in the deficiency notice. Any ~~entity~~ institution that fails to submit a timely corrective action plan will be determined to be seriously deficient, or if the original notice stated the ~~entity~~ institution was seriously deficient, the ~~entity~~ institution may be subject to termination in accordance with the provisions set forth in 7 CFR 226.6.

(2) All corrective action plans are subject to review and approval by the department. If a corrective action plan is rejected by the department, a revised corrective action plan that addresses the deficiencies in the original plan must be submitted to the department no later than 15 calendar days from the date of receipt of the notice of rejection of the original plan. Any ~~entity~~ institution that fails to submit an amended corrective action plan within 15 calendar days of the receipt of the notice from the department shall be determined seriously deficient, and ~~may~~ will be subject to termination from the program.

~~(3) The department adopts and incorporates by reference 7 CFR 226.6 (2002), which specifies the administrative responsibilities, including those when a serious deficiency exists, of a state agency administering the CACFP. A copy of 7 CFR 226.6 (2002) may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.~~

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.603 TERMINATION AND REENROLLMENT OF A DAY CARE HOME PROVIDER (1) When a ~~sponsoring organization~~ terminates a day care home provider for ~~being seriously deficient~~ cause, the ~~sponsoring organization~~ shall must send to the department a copy of the termination letter that is sent to the provider. Upon receipt of this notification, the terminated provider's name will be added to the state list of terminated providers, sent to all sponsoring organizations day care home sponsors, and

~~(3) If the sponsor does re-enroll a provider who has been terminated for one or more serious deficiencies, the sponsor shall complete the following:~~

~~(a) notify the state CACFP of the re-enrollment in writing;~~

~~(b) visit the home at least twice per month for the first three months;~~

~~(c) complete a parent survey at least once in the first three months;~~

~~(d) during the second three months of re-enrollment, the sponsor must visit the home at least once a month; and~~

~~(e) complete a parent survey at least once in the second three months.~~

~~(4)~~(3) An entity institution or provider terminating operations with the CACFP while under corrective action will still be placed on the national disqualified list as well as the state disqualified list.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

#### 4. ARM 37.75.101

The proposed definition changes are reasonable and necessary for the following reasons:

Changes to the definition of "active recruitment" are necessary to make the definition easier to understand. The addition of the definition of newsletter that is invitational in content is necessary to specify the information that may be published in a contractor's newsletter. Not making this change leaves the definition vague.

The definition of "administrative funds" is removed because it is clearly explained in the federal regulations and is not used in the content of the Administrative Rules of Montana.

A definition for "adult day care" was added because it is a type of center that may participate in the CACFP. It is necessary because the other types of day care centers that may participate in CACFP are identified in the definitions.

The definition of "adverse administrative action" is changed to be consistent with the federal regulation, eliminating the word "administrative". This change is necessary to avoid confusion between the language in the federal regulation governing the

The definition for "announced visit" is changed to "announced review" to convey what actually takes place. The term "visit" does not encompass training and compliance issues. The term "review" is understood by the majority of CACFP participants and more accurately reflects the events that occur, which is the review of documentation.

The change to the definition of "center" is necessary to remain consistent with the federal regulations. Removing the words "in a specific area for a specific period of time" is necessary because not all centers have an agreement with the department.

The definition of "child care center" is included to remain consistent with the federal regulations. The revision provides information about what type of institution may participate in the CACFP. The definition for child care center is added and necessary because it is referred to throughout the CACFP rule and is not currently defined.

The definition of "corrective action plan" is changed removing the words "approved by the department". This change is necessary because the definition as stated is incorrect. A corrective action plan is not approved by the department until it has been performed by the contractor.

The definition of "day care home" is revised to include "DCH" as the acronym for day care home, and to include the language from the federal regulation definition. The change is necessary to explain thoroughly what a day care home is and avoid confusion.

A definition for "emergency shelter" was added because it is a type of center that could participate in the CACFP. It is necessary because the other types of day care centers are identified in the definitions.

The definition of "institution" was changed to show that term refers to centers or sponsors that are under contract with the department to administer the CACFP.

The definition for "licensing staff" is changed to state that licensing staff is also responsible for registering child care contractors. Not changing the definition omits the portion of the definition that makes contractors aware that licensing staff is also responsible for child care registrations.

include a more thorough and substantive definition.

#### ARM 37.75.102 Civil Rights

Adding the manual section on civil rights to section (1) is reasonable and necessary to specify the correct manual section to locate the civil rights information.

The changes to subsections (2)(a) and (b) are necessary to include the requirement that equal opportunity be part of the nondiscrimination statement. The changes are necessary because the content is all one quote, and it is incorrect as currently stated.

#### ARM 37.75.105 Head Start Categorical Eligibility

The changes to section (1) of this rule are reasonable and necessary to convey the state requirement that data be collected uniformly throughout the state by using the state's Income Eligibility form. Without this change, there is a significant margin for error in determining CACFP reimbursement classifications because the Head Start income eligibility considerations are not the same as the income guidelines for the CACFP.

ARM 37.75.105(2) includes the requirement that records be readily available during the time of a review. Not including this requirement could be costly to the state and to the Head Start due to postage, copying, and staff time costs.

ARM 37.75.105(3) and (4) are proposed to be deleted. This change is reasonable and necessary because the majority of the language was taken from the federal regulation 7 CFR 226. The federal regulation clearly explains the Head Start requirements and placing it in the ARM is redundant.

#### ARM 37.75.109 Audit Grants

The change to subsection (1)(b) is reasonable and necessary to refer to the correct terminology of "procure" rather than "purchasing" or "acquisition", thereby alerting contractors that they must meet the procurement requirements of the CACFP and the state of Montana.

The requirement for the debarment certificate in subsection (1)(c)(iii) is removed. The change is reasonable and necessary

The change to section (2) is necessary to clarify that applications are available, but will not be accepted if two sponsors already are serving an existing county and need cannot be established. Not changing the rule could create work for an institution desiring to become a day care home sponsor in completing an application when it will not be accepted.

The change to section (3) is necessary to let day care home sponsors know that the department must confirm that a provider would be more efficiently served by a sponsor in an adjacent service area.

The wording of sections (4) through (8) was changed to make the requirements easier to understand.

The change allowing the department to assign day care homes to sponsors in section (9) is necessary in the event that a day care home sponsor is unable to accept all of the day care homes from a discontinuing or terminated sponsor.

#### ARM 37.75.202 Tiering Changes

The changes in this rule are reasonable and necessary to state clearly the correct use of the information received by day care home sponsors. The change is reasonable and necessary to use the same language and terms of reference throughout the rule, making it easier to understand. Not including this change leaves the rule incomplete, unclear, and incorrect.

#### ARM 37.75.205 Provider Enrollment

Section (1) was changed to state clearly that a new provider must have current registration before beginning participation in the CACFP, and to clarify that a renewing provider may be in the renewal process and still participate in the CACFP if assurance is obtained from state licensing staff that the registration is being renewed.

The change to subsection (2)(a)(iv) is necessary to correctly identify all documents that show proof of valid registration. Excluding the document from the "virtual pavilion" allows for errors to occur, and can result in delays in processing because the sponsor is unaware that this form of documentation is acceptable.

The change to section (3) is necessary because the forms



take corrective action. Not making this change conveys incorrect information.

The change to section (7) is necessary to list and name the documents that must be retained in accordance with the federal regulations of three federal fiscal years plus the current federal fiscal year.

The addition of section (8) is necessary to specify which information is considered permanent documentation that must always be available. Having this information readily available saves time for the state review team and for the sponsor's monitors.

Changes to section (9) are necessary so that a single form can be completed instead of a five page agreement when a provider moves or has a name change. This change reduces the paperwork required and makes it easier for both day care home sponsors and providers to meet program requirements.

Changes to section (10) are necessary to assure that the meal time change form becomes part of the sponsor/provider agreement. As part of the sponsor/provider agreement, the rights and responsibilities of the provider and of the sponsor apply.

#### 37.75.206 Recruitment

Changes to subsections (4)(a), (b), and (c) are reasonable and necessary to comply with the federal requirements, 7 CFR 226, governing the CACFP.

Changes to sections (6) and (7) are reasonable and necessary because the existing language no longer applies.

#### 37.75.209 Changing Sponsoring Organization

Subsection (3)(b) changes are reasonable and necessary to keep the department informed as is required by federal regulation.

The proposed amendments to section (5) are reasonable and necessary to assure that a provider that is not performing in compliance with CACFP requirements may not switch sponsors to avoid corrective action or potential termination. Not including this language could potentially damage the integrity of the CACFP.

requirements are met by sponsors in performance of menu evaluations. Not including this change implies that participants (children and adult participants, as defined by 7 CFR 226.2) are responsible to ensure minimum menu standards are met.

The changes to section (2) are reasonable and necessary to state more simply the responsibility of sponsors in regard to menu evaluations and to use the same term of reference throughout the rule.

#### 37.75.302 Infant Meal Reimbursement

The changes to sections (1) through (5) are reasonable and necessary to include changes in the federal regulations for provider and/or center infant meal reimbursement. Not including these changes leaves the rule incorrect, incomplete, and allows for errors and incorrect claiming procedures by providers and centers.

#### 37.75.401 Sponsor and Facility Training and Training Records

The caption of this rule is changed to specify to whom the rule applies. This is necessary to make it easier for contractors to locate the information in the administrative rule.

Section (2) is changed to use the same terminology as the federal regulation governing the CACFP. The words "day care home provider" or "center" are replaced with facility. The change is necessary to avoid confusion in terminology between the federal and state guidance.

Subsection (4)(b) is changed to eliminate the need for documentation of a training facilitator's qualifications. The CACFP does not require specific qualifications for a facilitator to provide training. The change is necessary to correct the rule.

Subsection (4)(c) is deleted. The CACFP does not require documentation of the anticipated educational outcomes of training beyond the requirements otherwise stated in section (3). Not changing the rule leaves the rule incorrect.

Subsection (4)(d) is simplified, removing the requirement that a roster labeled with the course name and outcome be kept as documentation. The course name or title will be included on the

Making this change can reduce the expense incurred by the contractor in having staff attend training offered by the department. Not making this change could make attendance at training offered by the department unnecessarily costly to attend by institutions.

Section (6) is changed to reduce the number of hours, from five hours to four hours, that a day care home provider must participate in training offered by their sponsor. The CACFP believes that four hours is sufficient time to training day care home providers on CACFP requirements and nutrition. The change is necessary to make it easier for day care home providers to obtain the required training. Not making this change can make it more difficult for day care home providers to obtain the required training.

#### 37.75.402 Milk Purchase Records

The hearing was changed to accurately refer to the subject. Not changing the rule leaves language that refers to something that does not exist.

#### 37.75.501 Reviews of Day Care Home Sponsors

Subsections (3)(a), (b), and (c) were removed entirely. This change is necessary because the topics addressed are clearly defined in the federal regulation. The federal regulation does not allow claims for reimbursement to be held pending verification of corrective action. Not changing the rule leaves the rule incorrect.

#### 37.75.502 Reviews of Centers and Sponsors of Centers

ARM 37.75.502 was changed entirely to provide specific courses of action to be taken by the CACFP and the institutions, to make the rule more clear, and to convey more directly the intent of the rule.

Section (2) was changed to specify that records must be made available to reviewers at the time of the review, and to limit the possibility of records being created after the fact.

Subsections (2)(j) through (n) were added to the rule to make institutions aware of information about records they are required to have on site pursuant to federal regulation, 7 CFR 226, and thereby increase their ability to comply with the

inform them of the potential consequences of not retaining and providing such records.

Section (5) was added to provide institutions an opportunity to request an exception for not having records on site or available and to set forth to institutions the kind of circumstances in which an institution might be excepted from having such records available as otherwise required.

Section (6) was added to state the amount of time the CACFP may take to respond to a request for an exception from an institution.

Section (7) was added to provide examples of reasons an exception may be granted thereby reducing the time and expense to institutions and the CACFP in preparing and reviewing requests for exception that would not justify the granting of an exception.

Section (8) was added to inform institutions that their claim may be held for up to 45 days if the amount of money owed to the program is being determined. In this manner, the state can take the money due from the current claim without having to request a check. This is necessary to help assure the CACFP is repaid for any money owed to the program, and is the most cost effective method to collect payment.

Section (9) was added to increase the awareness that additional records may be randomly requested when an institution has been under corrective action, thereby ensuring CACFP's capability to safeguard CACFP integrity and prevent potential fraud within the program.

#### 37.75.601 Administrative Reviews (Appeals) and Fair Hearings

The word administrative has been removed throughout the rule. An institution can appeal any adverse action. Removing the word makes the statements correct. Not removing this word implies that only adverse administrative actions can be appealed by the institutions, which is not the case.

Section (5) has been added to include the ARM governing fair Hearings of the CACFP into the CACFP rules. The word "appeal" is included with references with "administrative reviews" to provide a more full sense of the meaning of the rule.

begins. Not including this change would leave the referenced period too vaguely defined.

37.75.603 Termination and Reenrollment of a Day Care Home Provider

Changes to ARM 37.75.603 are necessary because the federal regulation governing the CACFP changed. Not changing the rule leaves the information contradictory to federal regulation and incorrect.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 8, 2005. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 31, 2005.